

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OKANOGAN VALLEY TRANSPORTATION LLC,

CASE NO. C20-1153JLR

ORDER

Plaintiff,

V.

ACE PROPERTY AND
CASUALTY INSURANCE CO., et
al.,

Defendants.

I. INTRODUCTION

Before the court is Defendants Ace Property and Casualty Insurance Company, Chubb National Insurance Company, and Chubb Indemnity Insurance Company’s (collectively, “Defendants”) motion to transfer this case to the United States District Court for the Eastern District of Washington. (*See* Mot. (Dkt. # 10); Reply (Dkt. # 14).) Plaintiff Okanogan Valley Transportation, LLC (“OVT”) opposes the motion.

1 (See Resp. (Dkt. # 12).) The court has reviewed the motion, the relevant portions of the
 2 record, and the applicable law. Being fully advised, the court GRANTS the motion and
 3 transfers this case to the Eastern District of Washington.

4 **II. BACKGROUND**

5 This is an insurance coverage dispute related to an automobile accident that
 6 occurred in Spokane, Washington, on October 11, 2018. (See Am. Compl. (Dkt. # 1-2)
 7 ¶¶ 4.1-4.2.) OVT operates a “medical non-emergency transportation company dedicated
 8 to providing transportation for disabled people to medical appointments throughout
 9 Washington State.” (Malkuch Decl. (Dkt. # 13) ¶ 2.) OVT is based out of Oroville,
 10 Washington. (*Id.*) On October 11, 2018, an OVT employee was driving one of OVT’s
 11 vehicles when she was struck by an uninsured motorist, which caused damage to OVT’s
 12 vehicle. (Am. Compl. ¶ 4.2.)

13 OVT was insured by Defendants under a commercial insurance policy that
 14 included an underinsured motorist endorsement (“the Policy”). (*Id.* ¶ 4.1.) The Policy
 15 was in full force and effect on the date of the accident at issue in this case. (*Id.*) After
 16 the accident, OVT made a claim under the Policy for the losses incurred as a result of the
 17 damage to OVT’s vehicle. (*Id.* ¶ 4.4.) Defendants denied that claim. (*Id.*)

18 Defendants removed this action to this court from Snohomish County Superior
 19 Court. (See Not. of Removal (Dkt. # 1) ¶ 20.) Shortly after removal, Defendants filed
 20 the instant motion to transfer this case to the Eastern District of Washington. (See Mot.)

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III. ANALYSIS

A. Legal Standard

A party may move to transfer venue pursuant to 28 U.S.C. § 1404(a) if transfer would serve “the convenience of the parties and witnesses” and “the interest of justice.” See 28 U.S.C. § 1404(a). As a threshold matter, the moving party must first show that the transferee district is one in which the suit “might have been brought” in the first instance. See *id.* In other words, the moving party must show that the transferee court possesses subject matter jurisdiction over the action, venue would have been proper in the transferee court, and the parties would be subject to personal jurisdiction in the transferee court. See *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960); *A. J. Indus., Inc. v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 503 F.2d 384, 386-88 (9th Cir. 1974).

Once the threshold questions are resolved, the court considers whether the convenience of the parties and witnesses and the interest of justice favor transfer. *See* 28 U.S.C. § 1404(a). In a “typical case not involving a forum selection clause, a district court . . . must evaluate both the convenience of the parties and various public-interest considerations.” *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Ct. for the W. Dist. of Tex.*, 571 U.S. 49, 62 (2013). The Ninth Circuit Court of Appeals instructs district courts to apply a nine-factor balancing test to determine whether to transfer a case under Section 1404(a). *See Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). The balancing test weighs: “(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff’s choice of forum, (4) the respective parties’ contacts with the forum, (5) the contacts

1 relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the
2 costs of litigation in the two forums, (7) the availability of compulsory process to compel
3 attendance of unwilling non-party witnesses, . . . (8) the ease of access to sources of
4 proof," and (9) the public policy considerations of the forum state. *See id.* at 498-499.

5 **B. Threshold Issues**

6 The court notes that Defendants have carried their burden to establish that the
7 Eastern District of Washington is a suitable alternative forum for this dispute. (*See Mot.*
8 at 4.) In fact, OVT concedes that the Eastern District of Washington is a forum "in which
9 the action might have been brought." (*See Resp.* at 4 (citing 28 U.S.C. § 1404(a))). The
10 court agrees with both parties that there are no jurisdictional or venue-related issues with
11 Defendants' request to transfer this case to the Eastern District of Washington.

12 **C. Balancing Test**

13 At least three of the nine *Jones* factors that the court must apply in considering
14 whether to transfer under Section 1404(a) weigh heavily in favor of transferring this case
15 to the Eastern District of Washington. First, Defendants issued the Policy to OVT, which
16 is headquartered in Oroville, Washington. (*See* Malkuch Decl. ¶ 2; Knowles Decl. (Dkt.
17 # 11) ¶ 2, Ex. A at 7.) Oroville, Washington is located in Okanogan County, which is
18 within the territorial jurisdiction of the Eastern District of Washington. 28 U.S.C.
19 § 128(a) (detailing territorial jurisdiction of the Eastern District of Washington to include
20 Okanogan County). Defendants are located outside of Washington. (*See* Not. of
21 Removal ¶¶ 10-12.) Thus, the Policy was at least partially negotiated and executed in the
22 Eastern District of Washington where OVT is domiciled and headquartered. On the other

1 hand, there is no connection between the negotiation of the Policy and the Western
 2 District of Washington.

3 Second, the Eastern District of Washington has stronger contacts with the parties
 4 than the Western District of Washington. OVT and Defendants both do business in the
 5 Eastern and Western Districts of Washington.¹ (*See* Malkuch Decl. ¶¶ 2, 4-6; Mot. at 8
 6 (conceding that Defendants provide insurance to customers in the Western District of
 7 Washington).) Thus, the generic business contacts do not favor either district. However,
 8 as discussed above, OVT is headquartered in the Eastern District of Washington. Thus,
 9 the court concludes that this factor favors the Eastern District of Washington.

10 Third, there are also significantly more case-specific contacts in the Eastern
 11 District of Washington. The accident and loss at issue occurred in Spokane, Washington,
 12 which is in the Eastern District of Washington. *See* 28 U.S.C. § 128(a) (detailing
 13 territorial jurisdiction of the Eastern District of Washington to include Spokane County).
 14 As discussed above, the Policy was at least partially negotiated and executed in the
 15 Eastern District of Washington. Until OVT's counsel became involved in OVT's claim,
 16 Defendants' claims handling communications were directed at OVT in the Eastern
 17 District of Washington. (*See* Supp. Knowles Decl. (Dkt. # 15) ¶¶ 3-5, Exs. B-D.) In
 18 contrast, it appears that the only connection between this case and the Western District of
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20 ¹ OVT's president, Eric Malkuch, alleges that he has more contacts with the Western
 21 District of Washington than the Eastern District of Washington. (*See* Malkuch Decl. ¶ 7.)
 22 However, Mr. Malkuch's contacts with the Western District of Washington are related to
 medical treatment that he receives and his family connections. (*Id.*) Thus, these contacts are
 personal to Mr. Malkuch, not OVT, and are not relevant to this motion.

1 Washington is the location of OVT’s counsel, which the court gives little weight. *See,*
 2 *e.g., Sponcler v. BNSF Railway Co.*, No. C19-0112BJR, 2019 WL 3550659, at *1-2
 3 (W.D. Wash. Aug 5, 2019) (transferring a case to the Eastern District of Washington
 4 where “the facts, witnesses, and evidence in this case are all centered around Spokane,
 5 Washington” and the case “has no connection to the Western District of Washington
 6 other than the fact that Plaintiff’s local counsel is in Seattle”). Thus, the case-specific
 7 contacts weigh in favor of transferring this case to the Eastern District of Washington.

8 Five of the factors are neutral. Specifically, given that the Eastern District and
 9 Western District are both in Washington, the court concludes that both districts are
 10 equally familiar with the governing law and that Washington’s public policy is irrelevant
 11 to this motion. OVT argues that the sixth, seventh, and eighth *Jones* factors—the cost of
 12 litigation, the availability of process, and the ease of access to evidence—are all neutral
 13 (*see* Resp. at 8-10), and Defendants offer only speculation that those factors favor
 14 transfer (*see* Mot. at 9). Based on the current record, the court agrees with OVT that
 15 these factors are neutral due to the fact no party has submitted evidence indicating that
 16 these factors favor one district over the other.

17 Thus, only one factor favors retaining this litigation in the Western District of
 18 Washington—the fact that OVT chose this forum. There is typically a “strong
 19 presumption in favor of Plaintiff’s choice of forum.” *See, e.g., Authentify Patent Co.,*
 20 *LLC v. StrikeForce Techs., Inc.*, 39 F. Supp. 3d 1135, 1148-49 (W.D. Wash. 2014).
 21 However, that presumption erodes where, as here, the chosen forum lacks any particular
 22 interest in the underlying lawsuit. *See, e.g., Park W. Galleries, Inc. v. Illinois Nat’l Ins.*

1 | *Co.*, C11-0780JCC, 2011 WL 13160389, at *3 (W.D. Wash. Nov. 15, 2011) (“[I]f the
2 | operative facts have not occurred within the forum of original selection and that forum
3 | has no particular interest in the parties or the subject matter, the plaintiff’s choice is
4 | entitled only to minimal consideration.”) (citations and internal quotations omitted); *Wise*
5 | *v. Techtronic Indus. Co., Ltd.*, No. C10-471MJP, 2010 WL 11553269, at *1 (W.D. Wash.
6 | Nov. 3, 2010) (noting that “deference is diminished when a plaintiff does not reside in the
7 | forum or operative events occurred elsewhere”). Accordingly, although the court
8 | recognizes that OVT’s choice of forum weighs in favor of keeping this lawsuit in the
9 | Western District of Washington, the court concludes that that factor alone does not
10 | outweigh the other factors discussed above that favor transferring this case.

11 In sum, the court concludes that first, fourth, and fifth *Jones* factors weigh heavily
12 in favor of transferring this case to the Eastern District of Washington; the second, sixth,
13 seventh, eighth, and ninth factors are neutral; and the third factor weighs slightly in favor
14 of keeping this case in the Western District of Washington. Thus, on balance, the court
15 concludes that the nine-factor *Jones* test weighs in favor of transferring this case to the
16 Eastern District of Washington. Accordingly, the court GRANTS Defendants’ motion to
17 transfer.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the court GRANTS Defendants’ motion to transfer

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1 venue to the Eastern District of Washington pursuant to 28 U.S.C. § 1404(a) (Dkt. # 10).

2 The court DIRECTS the Clerk to transfer this case to the Eastern District of Washington.

3 Dated this 7th day of October, 2020.

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JAMES L. ROBART
United States District Judge